

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOSE RODRIGUEZ,

Plaintiff,

v.

JAMES G. COX et al.,

Defendants.

Case No. 3:15-cv-00413-MMD-VPC

ORDER

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On August 25, 2015, this Court issued an order directing Plaintiff to file an application to proceed *in forma pauperis* because Plaintiff had failed to do so. (Dkt. no. 5.) The Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400.00 within thirty days from the date of that order. (*Id.* at 2.) The thirty-day period has now expired, and Plaintiff has not filed an application to proceed *in forma pauperis*, paid the full filing fee, or otherwise responded to the Court's order. On September 1, 2015, this Court entered a minute order directing Plaintiff to file his updated address with the Court and noted that failure to do so "may result in dismissal of this action with prejudice." (Dkt. no. 7 at 1.) Plaintiff has not filed an updated address with the Court.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's

1 failure to prosecute an action, failure to obey a court order, or failure to comply with  
2 local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for  
3 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.  
4 1992) (dismissal for failure to comply with an order requiring amendment of complaint);  
5 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply  
6 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*  
7 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply  
8 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal  
9 for lack of prosecution and failure to comply with local rules).

10 In determining whether to dismiss an action for lack of prosecution, failure to  
11 obey a court order, or failure to comply with local rules, the court must consider several  
12 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need  
13 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
14 favoring disposition of cases on their merits; and (5) the availability of less drastic  
15 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,  
16 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

17 In the instant case, the Court finds that the first two factors, the public's interest in  
18 expeditiously resolving this litigation and the Court's interest in managing the docket,  
19 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs  
20 in favor of dismissal, since a presumption of injury arises from the occurrence of  
21 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.  
22 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor —  
23 public policy favoring disposition of cases on their merits — is greatly outweighed by the  
24 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that  
25 his failure to obey the court's order will result in dismissal satisfies the "consideration of  
26 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;  
27 *Henderson*, 779 F.2d at 1424. The Court's order requiring Plaintiff to file an application  
28 to proceed *in forma pauperis* or pay the full filing fee within thirty days expressly stated:

1 "IT IS FURTHER ORDERED that if Plaintiff does not timely comply with this order,  
2 dismissal of this action may result." (Dkt. no. 5 at 2.) Thus, Plaintiff had adequate  
3 warning that dismissal would result from his noncompliance with the Court's order to file  
4 an application to proceed *in forma pauperis* or pay the full filing fee within thirty (30)  
5 days.

6 It is therefore ordered that this action is dismissed without prejudice based on  
7 Plaintiff's failure to file an application to proceed *in forma pauperis* or pay the full filing  
8 fee in compliance with this Court's August 28, 2015, order.

9 It is further ordered that the Clerk of Court shall enter judgment accordingly.

10 DATED THIS 19<sup>th</sup> day of October 2015.

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13 MIRANDA M. DU  
14 UNITED STATES DISTRICT JUDGE  
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